

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

OSBALDO FARIAS,

Petitioner,

v.

Case No. 5:13-cv-81-JA-PRL

UNITED STATES OF AMERICA,

Respondent.

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**ORDER**

THIS CAUSE is before the Court on Petitioner's "Post-Judgment Motion to Amend the 28 U.S.C. 2255 Motion to Amend the Claims Because They Relate Back." (Doc. 9). As set forth below, the Motion will be denied.

On February 19, 2013, Petitioner timely filed a *pro se* Petition under 28 U.S.C. § 2255 seeking to set aside his conviction and sentence. (Doc. 1). The Petition stated a singular ground for relief.<sup>1</sup> On March 4, 2013, the Court entered an Order (Doc. 4) quoting the Petitioner's claim and finding it to be

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<sup>1</sup> Petitioner claimed:

I claim about violation on evidences the prosecutor show and the FBI about say, to I tied the shoelaces to the jury could imagine, which my co-defendant testified to that I tried to strangle Mr. Yazzie and it thas was never happened. I show in my sentencing hearing the evidence to show the real happened. "Existence" of videos to proved my innocence. The attorneys do not call two of my witnes to I need. My attorney put a witnes Dr. William Robert

incomprehensible. The Petition was denied for that reason and the Petitioner was given 30 days to file an amended petition. (*Id.*). Petitioner did not file an amended petition but instead filed an incomprehensible letter to the Clerk. (Doc. 5). The letter appeared to include a series of complaints concerning the credibility and/or sufficiency of the evidence presented at trial – matters that could and should have been raised on direct appeal. The Petition was subsequently dismissed on April 8, 2013. (Doc. 6). Petitioner filed his motion to amend more than 7 years later.

On December 9, 2020, the United States filed a Motion to Dismiss for Lack of Jurisdiction. (Doc. 14). The Government argues that Petitioner's motion is an unauthorized successive motion and the court lacks jurisdiction to consider his arguments. (*Id.* at 5). Alternatively, the Government argues that the motion does not "address some alleged defect in the integrity of his first section 2255 proceedings, but instead attempts to re-litigate his previous ground of relief based on the alleged ineffectiveness of his trial attorney." (*Id.* at 7).

On February 1, 2021, the Court ordered Petitioner to file a response to the motion to dismiss and warned that the motion to dismiss would be treated

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Anderson Forensic Pathology lie on my case, and a government witness Dr. Krzysztof Podjaskle.

See Doc. 1 at 4.

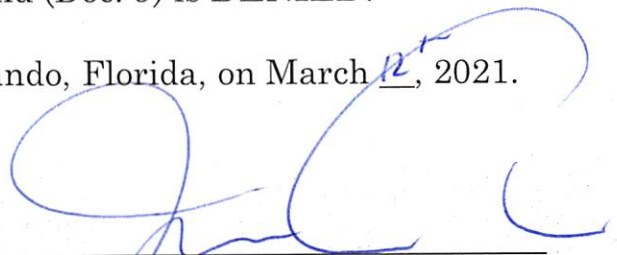
as unopposed if Petitioner did not respond within 14 days. (Doc. 15). Petitioner failed to comply; therefore, the Government's Motion to Dismiss will be treated as unopposed.

Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. The Government's Motion to Dismiss for Lack of Jurisdiction (Doc. 14) is **GRANTED**.

2. Petitioner's Motion to Amend (Doc. 9) is **DENIED**.

**DONE AND ORDERED** in Orlando, Florida, on March 12, 2021.



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JOHN ANTOON II  
United States District Judge

Copies to:

Counsel of Record  
Unrepresented Party